

1 ROBERT G. HULTENG, Bar No. 071293
rhulteng@littler.com
2 ANDREW M. SPURCHISE, Bar No. 245998
aspurchise@littler.com
3 GILBERT A. CASTRO, Bar No. 269872
gcastro@littler.com
4 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
5 San Francisco, California 94104
Telephone: 415.433.1940
6 Facsimile: 415.399.8490

7 SOPHIA BEHNIA, Bar No. 289318
sbehnia@littler.com
8 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
9 San Diego, CA 92101
Telephone: 619.232.0441
10 Facsimile: 619.232.4302

11 Attorneys for Defendants
UBER TECHNOLOGIES, INC. and
12 RASIER-CA, LLC

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 RICARDO DEL RIO, an individual
17 California resident, on behalf of himself
18 and all others similarly situated,

19 Plaintiff,

20 v.

21 UBER TECHNOLOGIES, INC., a
Delaware Corporation, RASIER-CA, LLC,
a Delaware Limited Liability Company,
22 and DOES 1 through 10, inclusive,

23 Defendants.
24
25
26
27
28

Case No. 3:15-cv-03667-EMC

**NOTICE OF MOTION AND MOTION TO
STAY JUDICIAL PROCEEDINGS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: June 9, 2016
Time: 1:30 p.m.
Courtroom: 5, 17th Floor

Complaint Filed: August 11, 2015
FAC Filed: September 21, 2015
Trial Date: None set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 9, 2016, at 1:30 p.m., or as soon thereafter as the
 3 matter may be heard in the above-entitled Court located at 450 Golden Gate Avenue, San Francisco,
 4 CA 94102, Defendants UBER TECHNOLOGIES, INC. and RASIER-CA, LLC will move this
 5 Court for an order briefly staying proceedings in this action (1) until Plaintiffs Ricardo Del Rio, Jose
 6 Valdivia, and Jose Pereira (“Plaintiffs”) opt out of the settlement in *Douglas O’Connor, et al. v.*
 7 *Uber Technologies, Inc.* (“O’Connor”), Case No. 13-03826, at which time Plaintiffs can proceed
 8 individually with their claims; or (2) if Plaintiffs do not opt out, or if they contend they may still
 9 proceed with collective claims notwithstanding a preliminarily approved class action settlement in
 10 *O’Connor*, until the *O’Connor* settlement is fully and finally approved by the Court and judgment
 11 entered.

12 Defendants request this stay on the grounds that on April 21, 2016, the parties in *O’Connor*
 13 filed a motion for preliminary approval of a classwide settlement. The proposed settlement seeks to
 14 release all claims pending in this matter (including the state law claims the Court stayed in its March
 15 28, 2016 order [Dkt.84]) and it encompasses the entire putative class and collective in this
 16 matter. Because a settlement in *O’Connor* could completely extinguish any potential class and
 17 collective claims in *Del Rio*, Defendants respectfully request a brief stay of proceedings.

18 This Motion is made and based on this Notice of Motion and the Memorandum of Points and
 19 Authorities filed herewith, the Request for Judicial Notice, the pleadings and records on file with this
 20 Court and on such oral and documentary evidence as may be presented at the time of hearing.

21 Dated: May 5, 2016

22
23 /s/ Sophia Behnia

24 ROBERT G. HULTENG

25 ANDREW M. SPURCHISE

26 GILBERT A. CASTRO

27 SOPHIA BEHNIA

28 LITTLER MENDELSON, P.C.

Attorneys for Defendants

UBER TECHNOLOGIES, INC. and

RASIER-CA, LLC

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1 **I. INTRODUCTION**

2 The issue before the Court is whether to stay this matter pending full and final resolution of
 3 the settlement in *Douglas O'Connor, et al. v. Uber Technologies, Inc.* (“*O'Connor*”), Case No. 13-
 4 03826, recently submitted for preliminary approval to this Court. If the *O'Connor* settlement is
 5 approved, it will subsume all of the claims and the entire class and collective in this matter. Out of
 6 respect for the interests of the putative class members and in accordance with principles of comity
 7 and judicial economy, both cases are best served by staying the *Del Rio* Action. A stay of this
 8 lawsuit will allow the parties and the Court in *O'Connor* to finalize the pending class settlement,
 9 which if approved by the Court, will extinguish Plaintiffs Ricardo Del Rio, Jose Valdivia, and Jose
 10 Pereira’s (“Plaintiffs”) lawsuit. Furthermore, by staying this entire action, the Parties will not be
 11 required to engage in motion practice regarding Plaintiffs’ Second Amended Complaint, which will
 12 likely be superfluous once the *O'Connor* Action is resolved.

13 Prior to the filing of the proposed settlement in *O'Connor*, the Court reviewed the causes of
 14 action that have recently been re-alleged in Plaintiffs Second Amended Complaint. The Court
 15 previously determined that the state law causes of action should be stayed due to the pendency of
 16 another case raising the same legal issues – *Price v. Uber Technologies, Inc. et al.*, Case No.
 17 BC554512. The proposed settlement in *O'Connor* specifically encompasses all the claims of both
 18 *Price* and the present action. Accordingly, the pending *O'Connor* settlement strengthens the basis to
 19 stay the entire case.

20 Because permitting the *O'Connor* Action to continue will be the most efficient resolution of
 21 the putative class’ claims, Defendants Uber Technologies, Inc. and Rasier-CA, LLC (“Defendants”) respectfully request this Court to stay all proceedings in this action (1) until Plaintiffs opt out of the
 22 *O'Connor* settlement, at which time Plaintiffs can proceed individually with their claims; or (2) if
 23 Plaintiffs do not opt out, or if they contend they may still proceed with collective claims
 24 notwithstanding a preliminarily approved class action settlement in *O'Connor*, until the *O'Connor*
 25 settlement is fully and finally approved by the Court and judgment entered.

27 **II. STATEMENT OF ISSUES TO BE DECIDED [L.R. 7-4]**

28 The following issues are raised by this motion:

1. Whether the Court should temporarily stay all proceedings in this action until Plaintiffs opt out of the *O'Connor* Settlement or the *O'Connor* Settlement is fully and finally approved by the Court and judgment entered.

III. FACTUAL BACKGROUND

A. Factual Background

1. The *Del Rio* Action

On August 11, 2015, Plaintiff Del Rio filed this class action complaint in this Court, alleging eight claims under the California Labor Code, one claim under the California Business & Professions Code, and one claim for injunctive relief. (*See* Dkt. 1). On September 21, 2015, a First Amended Complaint (“FAC”) was filed, adding Plaintiff Tony Mehrdad Sagheblian as a named plaintiff and adding an additional cause of action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* (*See* Dkt. 13). Plaintiffs’ FAC alleged eleven causes of action: (1) failure to pay overtime; (2) failure to pay minimum wages; (3) violation of Labor Code section 2699 pursuant to the Private Attorneys General Act (“PAGA”); (4) failure to provide itemized wage statements; (5) expense reimbursement; (6) failure to provide meal periods; (7) failure to provide rest periods; (8) waiting time penalties; (9) unfair business practices pursuant to the Business & Professions Code § 17200 *et seq.*; (10) injunctive relief; and (11) violation of the FLSA. With respect to both Plaintiffs’ state law and FLSA claims, Plaintiffs sought to represent “[a]ll Uber drivers (aka ‘Transportation Providers’) who have driven for Uber, an Uber ‘User’ or Uber Passenger in California during the Liability Period of August 11, 2011 and continuing.” (*See* Dkt. 13 at 11:9-11).

On January 22, 2016, Defendants filed a Motion to Dismiss the First Amended Complaint or in the alternative, stay Plaintiffs’ claims pending the outcome of the earlier filed case, *Price v. Uber Technologies, Inc. et al.*, Case No. BC554512 (Cal. Super. Ct., Los Angeles County). (*See* Dkt. 55). On March 28, 2016, the Court granted Defendant’s motion to stay Plaintiffs’ state law claims. In doing so, the Court relied heavily on the pendency of the *Price* case. The Court explained:

Plaintiffs’ state law claims overlap almost entirely with the claims raised in *Price v. Uber Technologies, Inc.*, Case No. BC554512. The only claim raised in the instant suit that was not brought in *Price* is a Labor Code section 203 waiting time claim; however, this claim is completely derivative of the overtime, minimum wage, meal break,

and rest break claims that are at issue in *Price*. FAC at ¶ 67 (“these employees were never paid any of the overtime compensation referred to in this Complaint, nor were they paid the other unpaid wages referred to in this Complaint”). Thus, *Price* will likely resolve all of the state claims at issue here. *Price* is also fairly advanced, with the motion for class certification on all of Plaintiffs’ state claims (except the section 203 claim) having been filed and arguments set for August 2016.

(Dkt. 84, 2:26-28, 3:1-7). The Court further noted “permitting this case to move forward creates the risk of piecemeal litigation, as the state claims will be proceeding in *Price*, while the underlying question of employment status will be litigated both in *Price* and in *O’Connor v. Uber Technologies, Inc.*, Case No. 13-cv-3826-EMC.” (See Dkt. 84 at 3:8-11). Thus, even prior to any settlement of the *O’Connor* case, the Court stayed Plaintiffs’ state law claims pending the outcome of *Price*.

On February 3, 2016, Plaintiff filed a Rule 20 motion to add additional plaintiffs Jose Valdivia and Jose Pereira, which the Court granted on March 8, 2016. (See Dkt. 58 and 78). On February 23, 2016, the parties stipulated to dismiss Plaintiff Saghebian’s claims against Defendants from the instant lawsuit and resolve his claims on an individual basis in arbitration. (See Dkt. 72 and 73).

On April 27, 2016, Plaintiff filed a Second Amended Complaint (“SAC”), adding plaintiffs Jose Valdivia and Jose Pereira. (See Dkt. 85) The SAC alleged the same 11 causes of action as the First Amended Complaint on behalf of the same defined class (*Id.* at 3:59-17; 31:18-26), meaning the SAC asserts that exact same causes of action previously ordered stayed by this Court pending the outcome of the earlier-filed *Price*.

2. The *O’Connor* Action

On August 16, 2013, over two years prior to the filing of the instant action, Plaintiffs Douglas O’Connor and Thomas Colopy filed a class action complaint in the Northern District entitled *O’Connor et al v. Uber Technologies, Inc.*, Case No. CV 13-03826-EMC).¹ (Defendants’ RJN, Ex. 1 [Operative *O’Connor* Complaint].) The plaintiffs in *O’Connor* alleged that Uber misclassified California drivers as independent contractors and asserted various derivative claims under California law. On April 21, 2016, after extensive discovery and motion practice, various

¹ On August 5, 2015, Plaintiffs filed a revised Second Amended Complaint, which is the current operative complaint and is attached as Exhibit 1 to Defendants’ Request for Judicial Notice in support of this motion.

1 amendments to the pleadings, two class certification orders and with multiple appeals currently
 2 pending before the Ninth Circuit, the parties to the *O'Connor* action reached a settlement that seeks
 3 to cover all wage and hour claims and litigation pending against Defendants in California.
 4 (Defendants' RJN, Ex. 2 [*O'Connor* Class Action Settlement and Release] at ¶¶ 2-11, 22.)

5 The motion for preliminary approval was filed on April 21, 2016 and the preliminary
 6 approval hearing is scheduled to take place on June 2, 2016. (*Id.* at Ex. 3 [*O'Connor* Motion for
 7 Preliminary Approval].) The settlement agreement in *O'Connor* explicitly covers **all** claims asserted
 8 in the instant action and specifically encompasses both the present action and the *Price* action:

9 ...this Settlement Agreement shall cover all wage-and-hour claims
 10 and litigation now pending against Defendants in California and
 11 Massachusetts (including standalone employment misclassification
 12 claims, claims related to or arising from alleged employment
 13 misclassification, reimbursement claims, tips claims, overtime
 14 claims, minimum wage claims, inaccurate wage statement claims,
 15 reporting time claims, payroll recordkeeping claims, claims for
 16 timely payment of wages upon discharge, claims for waiting time
 17 penalties, claims for payment for all hours worked, claims for
 18 working more than six days in seven, claims for improper deduction
 of wages, claims in court related to payment of workers'
 compensation, claims related to the provision of paid sick leave,
 meal and rest break claims...and claims brought under the California
 Labor Code Private Attorneys General Act of 2004 ("PAGA")
 and/or the California Unfair Competition Law ("UCL") predicated
 on or related to any alleged wage-and hour violations), including, but
 not limited to, the wage-and-hour claims now pending against
 Defendants in the following matters:

19 ...
 20 a) *Price et al. v. Uber Technologies, Inc. et al.*, Case No. BC554512
 (Cal. Super. Ct., Los Angeles County);

21 ...
 22 c) *Del Rio et al. v. Uber Technologies, Inc. et al.*, Case No. 3:15-cv-
 03667-EMC (N.D. Cal.)

23 (*Id.* at Ex. 2, ¶ 28.) The scope of the proposed settlement in *O'Connor* covers all cause of action of
 24 the present case.

25 If the district court grants final approval of the proposed settlement, an amended complaint
 26 will be filed and deemed the operative complaint in *O'Connor*. (*Id.* at Ex. 2, ¶ 29; Ex. B [Proposed
 27
 28

1 Fifth Amended Class Action Complaint] at ¶¶ 5, 86-87.)² The operative complaint in *O'Connor* will
 2 include each cause of action asserted in the instant action. (*Id.*) The class to be certified for
 3 settlement purposes will include all drivers who have used the Uber application in California. (*Id.* at
 4 ¶ 30.) In other words, Plaintiff and **the entire** putative class in the instant action will be settlement
 5 class members in *O'Connor*. Accordingly, they will receive notice and an opportunity to either
 6 participate in, or opt out of, the *O'Connor* settlement. (Defendants' RJN, Ex. 2 at ¶¶ 193-201.)

7 Similarly, if the Court grants final approval of the proposed settlement, the *O'Connor*
 8 settlement class members will all be bound by the release of the PAGA claims asserted in the
 9 amended complaint, even if a settlement class member chooses to opt out of the class settlement. (*Id.*
 10 at ¶ 200 ["Notwithstanding the submission of a timely request for exclusion, Settlement Class
 11 Members will still be bound by the settlement and release of PAGA claims or remedies under the
 12 Final Judgment."]) Thus, the operative complaint in *O'Connor* will include **all** PAGA claims
 13 asserted in *Del Rio*, and thus will fully extinguish Plaintiffs' PAGA claims in this case. That means,
 14 if the *O'Connor* settlement receives final approval, all of the class and representative (and
 15 potentially even individual) claims in the instant action will be extinguished.

16 **IV. THE *DEL RIO* ACTION SHOULD BE STAYED IN ITS ENTIRETY UNTIL THE** 17 **COURT GRANTS FINAL APPROVAL OF THE *O'CONNOR* SETTLEMENT** 18 **AGREEMENT**

19 **A. The First-to-File Doctrine Support Staying the *Del Rio* Action**

20 It is well established that federal courts have the power to stay or dismiss a lawsuit that
 21 parallels an action previously filed in a different United States district court. The Supreme Court has
 22 held that, "to permit a situation in which two cases involving precisely the same issues are
 23 simultaneously pending in different District Courts leads to the wastefulness of time, energy and
 24 money." *Ferens v. John Deere Co.*, 494 U.S. 516, 532 (1990). Accordingly, where as here, a
 25 complaint involving the same parties and same issues has already been filed in the same federal
 26 district, the court in which the second suit is filed may stay or dismiss the second suit. *Alltrade, Inc.*
 27 *v. Uniworld Products, Inc.*, 946 F.2d 622, 625 (9th Cir. 1991).

28 ² The Proposed Fifth Amended Class Action Complaint is attached as Exhibit B to the Class Action Settlement and Release, attached to Defendants' RJN, as a part of Exhibit 2. .

Where there are duplicative actions, principles of comity and judicial economy lead to the application of the first-to-file rule. Under Ninth Circuit precedent, this rule is a “generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district.” *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) (citing *Church of Scientology of California v. United States Department of the Army*, 422 F.2d 1187, 1193 (9th Cir. 1970)). This equally applies where, as here, the first filed and subsequent cases were filed in the same district. The prerequisites for application of the first-to-file rule are (1) the chronology of actions, (2) the identity of the parties involved; and (2) the similarity of the issues at stake. *Alltrade, supra*, 946 F.2d 625. According to a recent decision by Judge Thomas J. Whelan, “[b]ecause the first-to-file rule serves the purpose of judicial efficiency well, it ‘should not be disregarded lightly.’” *Jumapao v. Wash. Mut. Bank*, 2007 U.S. Dist. LEXIS 88216 * 4 (S.D. Cal. 2007) (citing *Alltrade, Inc.*, at 625).

Courts routinely stay actions pending the outcome of a settlement in a prior-filed class action that covers some or all of the claims and the class in the later-filed case, ***even when the proposed settlement is pre-preliminary approval***. See, e.g., *Adedapoidle-Tyehimba v. Crunch, LLC*, 2013 WL 1890718 at *4 (May 3, 2013) (staying state law claims in later-filed class action pending outcome of settlement in prior-filed class action); *Young v. Bank of America, N.A.*, 2013 WL 2952758 at *2 (Mar. 7, 2013) (staying later-filed class action because “it would be inefficient to allow the present case to go forward, while knowing that many of the putative class members will have their claims extinguished by the settlement (if approved) in the earlier-filed cases.”); *Meints v. Regis Corp.*, 2010 WL 625338 at *3 (Feb. 16, 2010) (staying later-filed class action pending outcome of proposed, pre-preliminary approval settlement in prior-filed class action because the settlement may prevent plaintiff in later-filed case “from proceeding with this case as a class action as to any of her claims.”).

Application of the three *Alltrade* factors to the *Del Rio* Action strongly favors invocation of the first-to-file rule, resulting in the Court staying the entire action (allowing Plaintiffs to either file a claim, exclusion, or objection in the *O’Connor* Action).

1 **1. The *O'Connor* Action Predates the Filing of Plaintiffs' Complaint**

2 It is undisputed that the *O'Connor* Action, which was filed in August 2013, and currently
3 pending in this Court, predates the filing of this action, filed on August 11, 2015. This chronology
4 therefore favors application of the first-to-file rule and stay of this action pending final approval of
5 the *O'Connor* Action.

6 **2. The Identity of the Parties in this Action is Substantially Similar to the**
7 **Parties in the *O'Connor* Action**

8 The parties in this action and the *O'Connor* Action are identical. Plaintiffs in this lawsuit
9 seek to represent a purported collective of individuals that includes themselves and “[a]ll Uber
10 drivers (aka ‘Transportation Providers’) who have driven for Uber, an Uber ‘User’ or Uber
11 Passenger in California during the Liability Period of August 11, 2011 and continuing.” (See Dkt.
12 85 at 3:59-17; 31:18-26.) These are the exact same individuals on whose behalf the *O'Connor*
13 Action is currently pending. (See, Defendants’ RJN, Ex. 1; and Ex. 2 at ¶¶ 2:21-3:8). In fact, if this
14 Court affirms the settlement, and unless Plaintiffs timely exclude themselves or otherwise object to
15 being part of the class, they will be subject to the *O'Connor* Settlement Agreement’s release
16 provisions.

17 Moreover, the fact that Plaintiffs are not a named class representative in the *O'Connor*
18 Action has no bearing on the application of the first-to-file rule. *Dist. Council 37 Health & Sec.*
19 *Plan v. McKesson Corp.*, 2006 U.S. Dist. LEXIS 30584 *2-3 (N.D. Cal. 2006) (“Although the
20 named plaintiffs are different in the two cases, the named plaintiffs are members of classes which are
21 defined identically in the two actions and are therefore substantially similar.”). Accordingly,
22 because both actions involve “substantially similar” parties, and because the outcome of the
23 *O'Connor* Action will likely radically alter the viability of the vast majority of Plaintiff’s claims, the
24 Court should apply the second-prong of the first-to-file rule and stay this action pending final
25 resolution of the *O'Connor* Action.

26 **3. Both Actions Assert Substantially Similar Legal and Factual Issues**

27 The “identity of issues” requirement of the first-to-file rule does not require strict identity,
28 but rather, that both actions be “substantially similar.” Under the rule, if the legal and factual issues

1 in both lawsuits give rise to the same causes of action and alleged wrongdoing by the defendant, then
 2 judicial economy and comity require the application of the rule. *Nakash v. Marciano*, 882 F.2d
 3 1411, 1416 (9th Cir. 1989) (exact parallelism is not required, it is merely enough “if the two
 4 proceedings are ‘substantially similar’”).

5 Both actions involve the same underlying factual allegations: namely that Defendants have
 6 an alleged practice of violating California wage and hour laws by failing to provide their alleged
 7 employees with meal and rest breaks, failing to pay overtime, failing to pay minimum wage, failing
 8 to reimburse alleged employees for expenses, and failing to provide proper wage statements. In fact,
 9 the proposed fifth amended complaint in *O’Connor* covers **all** of the claims pending in *Del Rio*.
 10 Given the fact that the legal and factual issues in this action are identical to the pending *O’Connor*
 11 Action, the Court should grant Defendants’ Motion.

12 **V. CONCLUSION**

13 For the forgoing reasons, Defendants respectfully request that the Court stay this entire action
 14 until final resolution of the *O’Connor* Action, at which time Plaintiffs’ right to continue with their
 15 putative collective action will likely be severely constrained by principles of *res judicata*.

16
 17 Dated: May 5, 2016

18
 19 /s/ Sophia Behnia

20 ROBERT G. HULTENG

21 ANDREW M. SPURCHISE

22 GILBERT A. CASTRO

23 SOPHIA BEHNIA

24 LITTLER MENDELSON, P.C.

25 Attorneys for Defendants

26 UBER TECHNOLOGIES, INC. AND

27 RASIER-CA, LLC

28
 Firmwide:140195177.4 073208.1083